

(1) Cracks attributed to normal curing or settlement.

(2) Cosmetic defects in cabinets, woodwork, floorcovering, wallcovering, ornamental trim, etc.

(3) Improper or incomplete seeding or sodding of yard, or failure of trees, shrubs, grass and other landscaping items to thrive.

(4) Improper grading of yard, unless the grade is causing damage which may lead to a structural defect.

(d) *Structural defect.* A defect in the dwelling or unit, installation or set-up of a unit, or a related facility or a deficiency in the site or site development which directly and significantly reduces the useful life, habitability, or integrity of the dwelling or unit. The defect may be due to faulty material, poor workmanship, or latent causes that existed when the dwelling or unit was constructed. The term includes, but is not limited to:

(1) Structural failures which directly and significantly affect the basic integrity of the dwelling or unit such as in the foundation, footings, basement walls, slabs, floors, framing, walls, ceiling, or roof.

(2) Major deficiencies in the utility components of the dwelling or unit or site such as faulty wiring, or failure of sewage disposal or water supply systems located on the property securing the loan caused by faulty materials or improper installation.

(3) Serious defects in or improper installation of heating systems or central air conditioning.

(4) Defects in or improper installation of safety and security devices, such as windows, external doors, locks, smoke detectors, railings, etc., as well as failure to provide or properly install devices to aid occupancy of dwellings by handicapped individuals, where required.

(5) Defects in or improper installation of protective materials, such as insulation, siding, roofing material, exterior paint, etc.

[56 FR 40241, Aug. 14, 1991, as amended at 67 FR 78327, Dec. 24, 2002]

§§ 1924.254–1924.257 [Reserved]

§ 1924.258 Notification of borrowers.

FmHA or its successor agency under Public Law 103-354 will notify by letter all borrowers who receive Section 502 RH financial assistance for a newly constructed dwelling or unit of the provisions of this subpart. Subsequent owners of eligible dwellings will also be notified in accordance with this section. Borrowers will be notified within 30 days after the loan is closed, or within 30 days after final inspection, whichever is later. This notification will contain information concerning time frames for filing claims under this subpart. FmHA or its successor agency under Public Law 103-354 will also notify and advise borrowers of the construction defects procedure at any time construction defects are apparent within the statutory time frame and favorable results cannot be obtained from the contractor. This notification will be documented in the borrower's case file.

§ 1924.259 Handling dwelling construction complaints.

This section describes the procedure for handling construction defect complaints.

(a) Each borrower who complains about construction defects will be requested to make a written complaint using a format specified by FmHA or its successor agency under Public Law 103-354 (available in any FmHA or its successor agency under Public Law 103-354 office). All known defects will be listed. An oral complaint may be accepted if making a written complaint will impose a hardship on the borrower. If an oral complaint is made, FmHA or its successor agency under Public Law 103-354 will notify the contractor on behalf of the borrower.

(b) The borrower will be informed that if, after 30 calendar days, the defects have not been corrected or other satisfactory arrangements made by the contractor, the borrower should notify FmHA or its successor agency under Public Law 103-354 using a format specified by FmHA or its successor agency under Public Law 103-354 (available in any FmHA or its successor agency under Public Law 103-354 office).

(c) FmHA or its successor agency under Public Law 103-354 will advise the contractor in writing of the borrower's complaint, the time and date of planned inspection by FmHA or its successor agency under Public Law 103-354 personnel, and request that the contractor accompany the inspector and borrower on a joint inspection of the property in an attempt to resolve the complaint.

(d) If, prior to the planned inspection, the contractor informs FmHA or its successor agency under Public Law 103-354 that the alleged defect(s) has been or will be corrected within 30 calendar days, FmHA or its successor agency under Public Law 103-354 will notify the borrower.

(e) If the case is not resolved as outlined in paragraph (d) of this section, FmHA or its successor agency under Public Law 103-354 will:

(1) [Reserved]

(2) Notify the borrower, contractor and manufacturer, if applicable, in writing of FmHA or its successor agency under Public Law 103-354's findings and who has been determined responsible for correcting the defect(s).

(i) If the defects are determined to be covered under the contractor's warranty, FmHA or its successor agency under Public Law 103-354 will advise the contractor that the repairs must be completed within 30 calendar days or other time period agreed to by the borrower, the contractor, and FmHA or its successor agency under Public Law 103-354.

(ii) FmHA or its successor agency under Public Law 103-354 will further advise the contractor and/or manufacturer that if the defect(s) are not corrected, the Government will consider compensating the borrower for the costs of correcting the defect(s). In such a case, the contractor and/or manufacturer may be liable for costs paid by the Government and may be subject to suspension and/or debarment pursuant to subpart M of part 1940 of this chapter (available in any FmHA or its successor agency under Public Law 103-354 office). Even if the manufacturer is determined to be solely responsible for the defect, the contractor will still be held liable for correction of the defect.

(3) Should a contractor refuse to correct a defect after being officially requested in writing to do so, FmHA or its successor agency under Public Law 103-354 will promptly institute formal suspension and debarment proceedings against the contractor (as a company and as individual(s)) in accordance with subpart M of part 1940 of this chapter (available in any FmHA or its successor agency under Public Law 103-354 office). The contractor's failure to reply to official correspondence or inability to correct a defect constitutes noncompliance.

(4) If the contractor is willing to correct legitimate defects but the borrower refuses to permit this, FmHA or its successor agency under Public Law 103-354 will document the facts in the borrower's case file. If the borrower chooses to file a claim for compensation for these defects, the circumstances of the borrower's refusal will be reviewed and may be sufficient grounds for disapproval of the claim.

(f)-(h) [Reserved]

§ 1924.260 Handling manufactured housing (unit) construction complaints.

When a borrower who has purchased a manufactured home (or "unit") complains about construction defects, the borrower will be instructed to first contact the dealer-contractor from whom the unit was purchased. FmHA or its successor agency under Public Law 103-354 will assist the borrower in obtaining assistance through the dealer-contractor's and/or HUD's complaint resolution process. If the dealer-contractor cannot resolve the complaint, the borrower should contact the appropriate State Administrative Agency (SAA) or HUD. If the complaint resolution process does not result in the correction of the defect, the borrower's complaint will be handled in accordance with § 1924.259 of this subpart.

§ 1924.261 Handling complaints involving dwellings covered by an independent or insured home warranty plan.

Borrowers with complaints about dwellings covered by an independent or insured home warranty plan will be instructed to first contact the warranty